Supreme Court, U.S.
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NO. 09-1166

IN THE

Supreme Court of the United States

Reza H. Ahmadi, Appellant

- *Petitioner,*

VS.

Static Control Components, Incorporated, Appellee

- *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING

Reza H. Ahmadi

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PETITION FOR REHEARING

Petitioner [referred to herein as "Ahmadi"] submits this petition for rehearing pursuant to this Court's Rule 44.2 because of "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented". Ahmadi filed Petition for Writ of Certiorari (Docket Case No. 09-1166) on March 3, 2010, and Supplemental Appendix on March 3, 2010. Certiorari was denied by this Court on June 1, 2010.

GROUNDS FOR REHEARING

The United States District Court for the Middle District of North Carolina has "manipulated the timing", for filing of petitioner's notice of appeal, to control and influence the outcome result of the Court of Appeals opinion on the merit.

The District Court have violated the United States Constitution. The Fifth Amendment (Amendment V) to the United States Constitution, which is part of the Bill of Rights, protects and enforces an individual's rights against abuse of government authority in a legal procedure.

The District Court has also misconstrued the statute; and the rule of law and therefore it has abused its discretion.

Ahmadi is in compliance with 28 U.S.C. § 2107 (a) and Federal Rule of Appellate Procedure 4(a) (1) (A), for timely filing of the notice of appeal to Court of Appeals. This statue and rule of law are clear and straight-forward. They apply equally to all, and are the products of deliberations by Congress and the rule

makers to balance the policies of stability and fairness. If they are to be changed, then they must be changed by those who created the time limits in the first place.

ARGUMENT

Ahmadi and his corporation Intelligent Office Products, Inc. seek to appeal the District Court's final order entering a default judgment against them. Ahmadi filed a timely appeal with the District Court; the case was transferred to the Court of Appeals for review of the judgment. The Court of Appeals dismissed the appeal for lack of jurisdiction, because the notice of appeal was not timely filed [1].
Ahmadi holds that the District Court abused its discretion by re-dating the notice of appeal. This resulted from manipulation and inexcusable neglect to alter the outcome opinion of the Court of Appeals.

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1 Court of Appeals holds that: "Because appellants failed to file a timely notice of appeal, we dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process".

In turn giving the trial court discretion to alter the time to appeal means that there will be no assurance as to when a judicial pronouncement is final. The lives of individuals and organizations rely on the finality of a court's decision. To allow a judgment to be altered for an unambiguous statute at their convenience or based on a judge's view of "equity," then the law has not been applied equally and the rule of law itself has been under-mined, that is un-fair to all who have placed their reliance on a court's ruling.

Under this fact presented here, where the District Court was aware of the re-dating of the filing date [2], (time limit), of the appeal and where no mistake, inadvertence or excusable neglect is shown .

The District Court had no authority to make the notice untimely for the purpose of controlling the

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2 SUPREME COURT OF THE U.S. - RULE Part VII. Practice and Procedure - Rule 29.2: A document is timely filed if it is received by the Clerk within the time specified for filing.

FEDERAL RULES OF APPELLATE PROCEDURE –RULE Part IV. Appeal as of Right -Fed.R.App.P. 4(a)(1): allows an appeal to be docketed as filed on the date it is received by court.

outcome. Similarly, see, e.g., , 243 So. 2d 629 (Fla. 1st DCA 1971) (explaining that where there has been no mistake, inadvertence or excusable neglect, the trial court had no authority to extend the time for appealing a final judgment by re-dating it after time for appeal had run;).

Jurisdictional deadlines and time limits are woven into every stage of litigation. This time limit is the one action that marks whether a lawsuit will end or whether it will continue on in a new court. Much is at stake for the parties, the court system, and society at large, in knowing whether a judicial decision has come to rest and cannot be altered or may still be overturned or modified by a reviewing court. Because of that, the law has long recognized that the goals of finality and evenhandedness do not allow these time limits to be overlooked by the court [3].

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3 For Congress to change, rather "than that the court depart from its settled course of action for a quarter of a century." *74 U. S. 306, 311(1869).* Reed v. Michigan, 398 F.2d 800, 801 (6th Cir. 1968) (per curiam) (holding that timely appeal is jurisdictional and "this Court cannot waive or modify that requirement");

The Supreme Court's precedent has been consistent for a century and a half. See, e.g., Barnhart v. Peabody, 537 U.S. 149, 159 n.6 (2003) (noting that it is an "accepted fact that some time limits are jurisdictional") (Souter, J.); Browder v. Director of Dept. of Corrections, 434 U.S. 257, 264 (1978) (recognizing that the time to appeal under statute "set[s] a definite point of time when litigation shall be at an end " and therefore is jurisdictional) [4]; and if it is to be changed, that is for the rule makers); Under Florida Rule of Civil Procedure 1.080(e), the rule conforms to the long-standing principle that "[w]hile our procedural rules [should] provide for an orderly and expeditious administration of justice, we must take care to administer them in a manner conducive to the ends of justice." Rogers v. First Nat'l Bank at Winter Park, 232 So. 2d 377, 378 (Fla. 1970). A rule that would deny a citizen who has timely

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4 The purposes served by a notice of appeal were accomplished by the Ahmadi's filing with District Court, and the filing occurred within the thirty days of the date of the District Court's order/judgment under the Fed. R. App. P. 4(a) (1) (A).

sought an appeal, his or her right to appeal based upon a proven negligent or mistake by a clerk's office, is not consistent with justice or due process [5]. The late filing of the appellants' notices of appeal in this case resulted from District Court abuse and manipulation that was beyond the control of the appellant. Thus the rationale of the decisions favorable to the late-filing appellant in this and similar cases are one of fundamental fairness. Practical experience teaches that the judicial system as a whole works far better—with greater stability and overall fairness—when the time for an appeal cannot be manipulated by the trial court and thus is treated as jurisdictional.

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5 The Fifth Amendment (Amendment V) to the United States Constitution, which is part of the Bill of Rights, protects and enforces of an individual's rights against abuse of government authority in a legal procedure.

In 1934, the United States Supreme Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental" (Snyder v. Massachusetts)*U.S. 97, 105 (1934)*. As construed by the courts, it includes the person or panel making the final decision over the proceedings be impartial in regards to the matter before them.

In the case of jurisdictional time limits, courts at times refer to the "fabric of the law, See, e.g., Wilson v. Arkansas, 514 U.S. 927, 933 (1995) (noting that the "knock and announce" rule is part of the "fabric" of Fourth Amendment law); Nisselson v. Lernout, 469 F.3d 143, 151 (1st Cir. 2006) (The in pari delicto defense has long been "woven into the fabric of the law."). A fabric woven from the thread of judicial decisions. the fabric is longer than most and has been woven from thousands of threads. The idea that a hole should be cut in the fabric here and there may seem immediately satisfying for a particular case. But the experience of generations of judges teaches that cutting such holes in the fabric will, in the long run, only cause the fabric as a whole to unravel.

While it is an important part of our jurisprudence, its application, or that of similar concepts, should be reserved for those instances that threaten the fabric of the law, or which by an improper handling of the law, would deprive a person of a clear right. See Alabama By-Products Corp. v. Neal, 588 A.2d 255,

258 n.1 (Del. 1991).

It is also clear that the jurisdiction of the United States Court of Appeals is defined by statute and extends only to those matters authorized by Congress. Title 28, United States Code, § 1291 grants the federal court of appeals jurisdiction to review all final decisions of the District Courts. Without proper jurisdiction, the Court of Appeals cannot proceed at all, but can only note the jurisdictional defect and dismiss the case. In Ahmadi's case the jurisdictional defect is caused by the District Court modifying and re-dating the time for filing the notice of the appeal, therefore Ahmadi's case is not final.

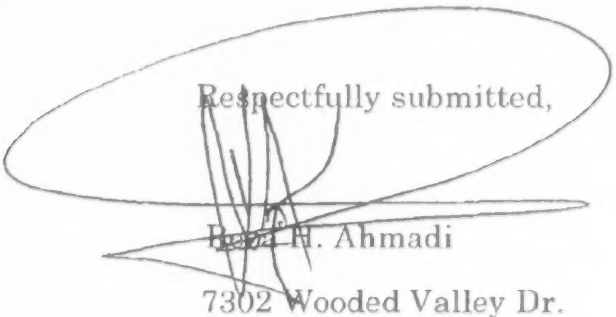
A final decision is one that terminates the litigation on the merits and leaves nothing to be done except enforcement of the judgment. Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 275 (1988); Caitlin v. United States, 324 U.S. 229, 233 (1945); Richerson v. Jones, 551 F.2d 918, 922 (3d Cir. 1977). It cannot be merely a provisional disposition of the issue, and it cannot be merely a step toward final

disposition of the merits.

Further, a final order is one that disposes of the entire controversy; that is, it resolves the claim with respect to the United States Constitution and rule of law.

CONCLUSION

For all the foregoing reasons, petitioner respectfully requests the Court to grant his petition for rehearing.



Respectfully submitted,

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CERTIFICATION UNDER RULE 44.2

Pursuant to this Court's Rule 44.2, Ahmadi hereby certify that this Petition for Rehearing is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Ahmadi hereby also certify that this Petition for Rehearing is presented in good faith and not for delay.

Dated: June 15, 2010



Reza H. Ahmadi